

## Federal Communications Commission

DA 00-2713

Before the  
Federal Communications Commission  
Washington, D.C. 20554

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In the Matter of	)	
	)	
Amendment of Section 73.202(b),	)	
Table of Allotments,	)	
FM Broadcast Stations	)	MM Docket No. 94-29
(Willows and Dunnigan,	)	RM-8416
California)	)	

**MEMORANDUM OPINION AND ORDER**  
(Proceeding Terminated)

Adopted: November 22, 2000

Released: December 1, 2000

By the Chief, Allocations Branch:

1. The Allocations Branch has before it for consideration a Petition for Reconsideration ("Reconsideration")<sup>1</sup> filed jointly by Marysville Radio, Inc. and Roseville Radio, Inc. ("Petitioners") of the Report and Order ("R&O"), 10 FCC Rcd 11522 (1995), in this proceeding.<sup>2</sup> The R&O substituted Channel 288B1 for Channel 288A at Willows, reallocated Channel 288B1 from Willows to Dunnigan, California, and modified the license for Station KIQS-FM accordingly. Comments in opposition to the petition for reconsideration were filed by Pacific Spanish Network ("Pacific"),<sup>3</sup> and a reply was filed by the petitioners.

2. Background. In response to a petition for rulemaking filed by KIQS, Inc, the former licensee of Station KIQS-FM, now KQSC(FM), the Notice in this proceeding proposed to substitute Channel 288B1 for Channel 288A at Willows, CA, to reallocate Channel 288B1 as a first local service at Dunnigan, CA, and to modify Station KQSC(FM)'s license accordingly.<sup>4</sup>

<sup>1</sup> Public Notice of the petition for reconsideration was given on December 14, 1995, Report No. 2117.

<sup>2</sup> MRI is currently the licensee of Stations KSXX(FM) and KMYC(AM), Marysville, CA, which were previously licensed to River Cities Radio, L.P. RRI is the licensee of KRCX(FM), Roseville, CA, which was previously licensed to its predecessor in interest, Fuller-Jeffrey Broadcasting of the Sacramento Valley. MRI's and RRI's respective predecessors in interest participated in prior proceedings in the above- referenced docket.

<sup>3</sup> Pacific became the licensee of KIQS-FM on March 31, 1993.

<sup>4</sup> The Notice also noted that the proposed reallocation would enable Station KQSC(FM) to increase its service area from 993 square kilometers containing 10,475 persons to an area of 4,754 square kilometers containing 161,280 persons, an increase of 379 percent in areas served and an increase of 1440 percent in the population

3. In the R&O, we determined that Dunnigan was a community for allotment purposes.<sup>5</sup> We further determined that the allotment to Dunnigan should be made because it triggers the higher allotment priority of a first local transmission service under Priority 3<sup>6</sup> as compared to Priority four, since the retention of KQSC(FM) in Willows would constitute its first local night-time transmission service.<sup>7</sup> Although Dunnigan was located closer to Sacramento, CA than Willows, neither city was located in an urbanized area as defined by the Census Bureau. Therefore, no Tuck factor analysis was required.<sup>8</sup>

4. Petition for Reconsideration. Petitioners argue that the Commission erred in granting the substitution of Channel 288B1 for Channel 288A at Willows and reallocating Channel 288B1 to Dunnigan. Petitioners argue that the Commission's decision is flawed in light of the new information that the Commission did not consider in its analysis. First, petitioner contends that there was no basis for the R&O's reliance on the 70dBu contour of the station instead of the 60 dBu contour, which defines the reach of the station's service area and which petitioner claims is the more appropriate standard. Petitioner submits an engineering analysis which shows that the station's 60 dBu contour would cover all of the Yuba City and Davis Urbanized Area and a portion of the Sacramento Urbanized Area.<sup>9</sup> Second, the petitioners contend that a translator application filed by a media broker associated with the station which proposes to retransmit the station signal to cover Sacramento is relevant to this proceeding. In light of the above, petitioners argue that Pacific's real intention was to serve the above areas, not Dunnigan. Lastly, petitioners argue that the R&O made no attempt to

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served.

<sup>5</sup>We determined that Dunnigan had a post office, zip code, fire and water department. Dunnigan also had churches, recreation facilities, and a general store. We also determined that the fact that some municipal services were provided by the county and that there was no local government or corporate boundaries was not fatal to petitioner's claims.

<sup>6</sup>The FM Allotment priorities are: (1) First full-time aural service; (2) Second full-time aural service; (3) First local service; and (4) other public interest factors. Co-equal weight is given to the second and third priorities. See Revision of FM Assignment Policies and Procedures, 10 FCC 2d 88 (1982).

<sup>7</sup>We also noted that Dunnigan was considered to be a well served area and that there would be a net service gain of almost 150,800 people. The proposed loss area will be left with no fewer than 9 aural reception services. 76% of the loss area will be served by at least 11 stations. We also determined that the removal of Willows' only local night time service was not dispositive since that community will continue to receive at least five full-time reception services and, therefore, is considered to be a well served area.

<sup>8</sup>See, Faye & Richard Tuck, 3 FCC Rcd 5374 (1988).

<sup>9</sup>Petitioner's engineering analysis was developed using the ECAC Terrain-Integrated Rough Earth Model (TIREM) propagation algorithm.

address Dunnigan's interdependence with Yuba City, Davis and Sacramento Urbanized Areas. Petitioner argues that a Tuck analysis is required.

5. Opposition. As a threshold matter, Pacific argues that petitioner's corrected reconsideration petition was filed after the statutory deadline and is, therefore, late. Pacific next argues that the so-called new facts that petitioner claims should trigger reconsideration are not new and that the petitioner has failed to carry its burden under Section 1.429(b) of the Commission's Rules. Pacific disagrees that Dunnigan is dependent on either Yuba City, Davis or Sacramento. Pacific disagrees that Dunnigan depends on Yuba City, Davis or Sacramento for municipal services. Regarding the engineering analysis, Pacific contends that the engineering is not new, just commissioned and filed late. Pacific further contends that the ECAC methodology used by the petitioner has never been acceptable for allotment purposes, citing Section 73.313(c). Pacific also argues that the translator application filed by Brett Miller is neither new information nor relevant to these proceedings. Finally, Pacific contends that the nighttime distant aural services that Willows will continue to receive after the reallocation of the station to Dunnigan is responsive to the needs of Willows. Pacific argues that the question of whether the 9 or 11 distant aural services are responsive in their programming to the needs of Willows is not relevant in this proceeding. Finally, Pacific agrees that the R&O properly weighed the loss to Willows of a second local service against the gain of a first local service to Dunnigan and concluded that the public interest favors the allotment, citing Homestead and North Miami Beach, FL, DA 95-2385.

6. Reply to opposition. Petitioners contend that the deadline for filing petitions for reconsideration was 30 days after the R&O was published in the Federal Register or November 30, 1995, and that the corrected petition was timely filed because it was filed before that date. Therefore, petitioners disagree that its corrected petition constituted an impermissible supplement.<sup>10</sup> Petitioners also state that they did attempt to serve Pacific on November 24, 1995. However, petitioners contend that Pacific has not been prejudiced by any alleged delay in service. Regarding the signal coverage, petitioners reiterate its engineers' contention that ECAC Terrian-Integrated Rough Earth Model ("TIREM") is an acceptable procedure to generate a more accurate assessment of signal coverage in flat terrain like that found in the Dunnigan-Sacramento area. Based on the foregoing, petitioners argue that Pacific's proposed signal would cover all the Davis and Yuba City Urbanized Areas.<sup>11</sup>

7. Discussion: We have considered the petitioners' reconsideration request and find that it

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<sup>10</sup> Petitioner notes that the petition filed on November 24, 1995 contained a few typographical errors and omitted one exhibit (a declaration confirming facts set forth in the text of the petition concerning driving time between Dunnigan and Sacramento).

<sup>11</sup> Approximately 225,000 people in the Sacramento Urbanized Area, and an additional 175,000 people through a proposed translator are alleged to receive coverage.

should be denied.<sup>12</sup> We agree with the staff's decision in the R&O in this proceeding, and we find that the proposed reallocation is fully consistent with the Commission's policy with regard to community of license changes.

8. To begin with, the petitioners' argument concerning new engineering information is without merit. This is due to the fact that we must reject petitioners' use of the ECAC-Terrain Intergrated Rough Earth Model (TIREM) propagation procedure to determine signal coverage. §73.313 of the Commission's Rules provides for submission of such propagation methods to supplement, but not supplant the Commission F (50,50) curves when the terrain departs widely from average terrain.<sup>13</sup> For the showing to be at all useful the procedures used in preparing the study must be described as well as assumptions made and the methodology employed, and in addition, sample calculations should be provided. See Reno Nevada, 3 FCC Rcd 5631 (1988). Petitioner does not do any of this. It only provides exhibits which allegedly show that based on the TIREM procedure, the actual 60dBu service will extend beyond the predicted 60dBu service contour, thus enabling the station to cover all of the Yuba City and Davis Urbanized areas as well as portions of the Sacramento Urbanized Area.

9. However, our staff engineering analysis reveals that, based upon maximum facilities, an omni-directional antenna, and the Commission's F (50, 50) curves, the 70 dBu contour of Channel 288B1 at the allotment reference coordinates in Dunnigan will not cover any part of the Yuba City, Davis, or Sacramento, CA Urbanized Areas. We also note that a construction permit has been granted for Channel 288B1 at a different site at Dunnigan and that from this site, the 70 dBu contour also does not cover any part of these Urbanized Areas. Using this same methodology, we have calculated the coverage of the 60 dBu contour and find that Channel 288B1 at the allotment reference site at Dunnigan will cover approximately 95% of the Yuba City, CA Urbanized Area but will not cover any part of the Davis or Sacramento, CA Urbanized Areas. However, from the construction permit site, the 60 dBu contour of Channel 288B1 will cover approximately 5% of the Davis Urbanized Area but will not cover any part of the Yuba City or Sacramento Urbanized Areas.

10. We next find that the Report and Order was correct in not applying the Huntington/Tuck test for a first local service preference for Channel 288B1 at Dunnigan because there was no 70 dBu coverage over any urbanized areas. While the petitioner argues that the 60,

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<sup>12</sup>The R&O was published in the Federal Register on 10/31/95. See 60 FR 55332 (1995). Consequently, the deadline for filing a petition for reconsideration was 30 days after the R&O was published or November 30, 1995 not November 24, 1995 as alleged by opponents. Therefore, petitioner's original petition for reconsideration and the subsequent "corrected" copy were both timely filed and will not be dismissed.

<sup>13</sup>The Commission's model predicts the field strength at distances from the transmitter according to the F(50,50) propagation curves in §73.333. These curves specify the estimated median field strengths expected to occur 50% of the time at 50% of the receive locations over a rolling or "average" terrain. The F(50, 50) curves are based on empirical data and are applied whatever the actual terrain or other conditions.

rather than the 70, dBu contour is the appropriate benchmark for analysis, we disagree. In this regard, we note that after the Commission established the change of community rule in a general notice and comment rulemaking proceeding, the Huntington/Tuck test was initially applied in change of community cases where the proposed community of license was located inside of an urbanized area. See, e.g., Elizabeth City, NC, 7 FCC Rcd 6815 (1992) (request for supplemental information to show that Cheasapeake, VA is deserving of a local service preference). Thereafter, we expanded our use of the Huntington/Tuck test and adopted a bright line test for its application. Specifically, we decided that a Huntington/Tuck analysis will be required in change of community cases where the proposed community of license is located proximate to but not inside an urbanized area and where the 70 dBu signal would cover 50% or more of an Urbanized Area. See Headland, Alabama and Chattahoochee, Florida, 10 FCC Rcd 10352, 10354 (1995). See also, e.g., Healdton, OK and Krum, TX, 14 FCC Rcd 3932 (1999) (Huntington / Tuck analysis not required where reallocation and change of community of license to Krum, TX will place a 70 dBu signal over only 22% of the Denton, TX urbanized area even though the 60 dBu signal will completely encompass the urbanized area). We believe that our action in the present docket is consistent with these precedents because, as noted in the Report and Order, Dunnigan is not located within any Urbanized Area and the 70 dBu signal of the Dunnigan station will not cover any part of an Urbanized Area. Moreover, this approach of using the 70 dBu contour has uniformly been followed for the past five years since its adoption, and we see no reason to deviate from it in the instant case.

11. We further find that the Report and Order properly compared the existing and proposed arrangement of allotments and concluded that the proposed arrangement of allotments was preferable because it triggered a first local service under Priority 3. By way of contrast, retention of the channel at Willows invoked Priority 4, Other Public Interest Matters, and would result at that time in a first night-time transmission service and a second full-time transmission service. Moreover, local transmission service would still be provided to Willows by a day-time only AM station, and night-time reception service was available from nine other stations licensed to different communities. This result is quite consistent with our past precedent under which a first local service is favored over retention of the only night-time service in the original community. See, e.g., Scotland Neck and Pinetops, NC, 7 FCC Rcd 5113 (1992), recon. denied, 10 FCC 11066 (1995) (first local service at Pinetops preferred over retention of sole local night-time service at Scotland Neck). Our view in this regard is further buttressed by the fact that, since the release of our Report and Order in this case, the Allocations Branch allotted Channel 292A to Willows as a second local service, and four applications are currently pending for this new allotment.

12. Finally, with respect to petitioners' argument that the filing of a translator application to retransmit the station's signal is somehow relevant to this proceeding, we agree with opponents that this fact is irrelevant. The basis for this conclusion is that translators are a secondary service and that they are not considered in allocation proceedings.

13. Accordingly, IT IS ORDERED, That the Petition for Reconsideration filed by Marysville Radio, Inc. and Roseville Radio, Inc. IS DENIED.

14. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

15. For further information concerning this proceeding, contact Arthur D. Scrutchins, Mass Media Bureau, (202) 418-2180.

**FEDERAL COMMUNICATIONS COMMISSION**

John A. Karousos  
Chief, Allocations Branch  
Policy and Rules Division  
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